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Utility Patent  
Ser. No. 09/742,835

a movable linkage arm, wherein said linkage arm is comprised of a pair of generally, linearly elongated rectangularly-shaped members pivotally connected at ends in an overlapping manner to the handle, wherein said operating rod serves to actuate opening and closing of the pair of movable claw appendages;

*AR*  
a pulley coupled via said linkage arm to said handle proximately positioned below said lever and freely rotatable about said linkage arm; and

a cable operatively engaged with said pulley and connected at one end to a side of said lever opposite said finger-gripping channels, and connected at an opposite end to a cable connecting stem, which is in turn connected to an anterior end of said operating rod.

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#### REMARKS

Reconsideration of the application as amended is respectfully requested.

Claims 1-5 were rejected by the examiner under 35 U.S.C. 103 based upon the Pakosh in view of Wendner. Further, Claim 6 was rejected under 35 U.S.C. 103 based upon the Pakosh in view of Wendner and further in view of Kaneko. It is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is inappropriate. Many differences exist between the weed extraction apparatus of the present invention and those disclosed in the art cited. The present invention includes a handle encapsulated within a sleeve of rubber to allow a user to obtain a non-slip, firm grasp of said handle. The pair of movable claw appendages are opposingly articulated by a linearly elongated lever pivotally mounted serving as a fulcrum. The lever includes a plurality of finger-gripping channels formed on an upper surface thereof so

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as to facilitate gripping of the lever. A spring biases the lever a position extending away from said anterior end of said handle. A pulley coupled via said linkage arm to the handle freely rotates about the linkage arm, and a cable operatively engaged with the pulley and connected at one end to a side of said lever opposite said finger-gripping channels is in turn connected to an anterior end of said operating rod.

Such a combination of features is not disclosed within the present invention.

However, by way of additional argument application wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. 103, the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective

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combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself.

Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985). The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Therefore, in view of foregoing amendments and clarifications, the applicant submits that allowance of the present application and all remaining claims, as amended, is in order and is requested.

Respectfully submitted,

John D. Gugliotta, P.E., Esq.  
Registration No. 36,538

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The Law Offices of John D. Gugliotta  
202 Delaware Building  
137 South Main Street  
Akron, OH 44308  
(330) 253-5678  
Facsimile (330) 253-6658

3. The weed extraction apparatus of Claim 1, wherein said lever includes a plurality of finger-gripping channels formed on an upper surface thereof so as to facilitate gripping of the lever.

4. The weed extraction device of Claim 3, further comprising a cable operatively engaged with said pulley and connected at one end to a side of said lever opposite said finger-gripping channels, and connected at an opposite end to a cable connecting stem, which is in turn connected to an anterior end of said operating rod.

5. The weed extraction device of Claim 1, wherein said linkage arm is comprised of a pair of generally, linearly elongated rectangularly-shaped members pivotally connected at ends in an overlapping manner to the handle, wherein said operating rod serves to actuate opening and closing of the pair of movable claw appendages.

6. The weed extraction device of Claim 1, wherein each claw appendage has an elongated T-shaped configuration comprised of a base which includes a plurality of sharpened, uniformly spaced, arcuate-shaped tines extending outwardly therefrom.

7 (New). A weed extraction apparatus comprising:

a handle of a linearly elongated cylindrical configuration, having an anterior end opposite a posterior end, wherein said anterior end of said handle is encapsulated within a sleeve comprised of a thin layer of rubber peripherally adhered thereto, extending a linear distance theredown, so as to allow a user to obtain a non-slip, firm grasp of said

PLEASE INCLUDE THE FOLLOWING CLEAN VERSION OF THE AMENDED  
CLAIM(S) PURSUANT TO 37 CFR 1.121(C)(1)(i)

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1. (Once Amended) A weed extraction apparatus comprising:

a handle of a linearly elongated cylindrical configuration, having an anterior end opposite a posterior end;

a pair of movable claw appendages;

a linearly elongated lever pivotally mounted to said anterior end by a bolt, said bolt also serving as a fulcrum for said pair of movable claw appendages;

an operating rod of a linear, rod-like configuration which extends parallel along a linear length of the handle and connects to a movable linkage arm pivotally mounted near the posterior end of the handle;

a spring disposed on said bolt and adapted so as to connectively embrace said lever in such a manner whereby said lever is biased to a position extending away from said anterior end of said handle;

a movable linkage arm.

a pulley coupled via said linkage arm to said handle proximately positioned below said lever and freely rotatable about said linkage arm.

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2. The weed extraction apparatus of Claim 1, wherein said anterior end of said handle is encapsulated within a sleeve comprised of a thin layer of rubber peripherally adhered thereto, extending a linear distance theredown, so as to allow a user to obtain a non-slip, firm grasp of said handle.

handle;

a pair of movable claw appendages;

a linearly elongated lever pivotally mounted to said anterior end by a bolt, said bolt also serving as a fulcrum for said pair of movable claw appendages, wherein said lever includes a plurality of finger-gripping channels formed on an upper surface thereof so as to facilitate gripping of the lever;

an operating rod of a linear, rod-like configuration which extends parallel along a linear length of the handle and connects to a movable linkage arm pivotally mounted near the posterior end of the handle;

a spring disposed on said bolt and adapted so as to connectively embrace said lever in such a manner whereby said lever is biased to a position extending away from said anterior end of said handle;

a movable linkage arm, wherein said linkage arm is comprised of a pair of generally, linearly elongated rectangularly-shaped members pivotally connected at ends in an overlapping manner to the handle, wherein said operating rod serves to actuate opening and closing of the pair of movable claw appendages;

a pulley coupled via said linkage arm to said handle proximately positioned below said lever and freely rotatable about said linkage arm; and

a cable operatively engaged with said pulley and connected at one end to a side of said lever opposite said finger-gripping channels, and connected at an opposite end to a cable connecting stem, which is in turn connected to an anterior end of said operating rod.